

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

DONALD PHOENIX BARKER,)
vs.)
Plaintiff,)
DELAWARE COUNTY DETENTION)
CENTER; LONNIE L/N/U,)
Defendants.)

Case No. 12-CV-591-GKF-FHM

ORDER

This is a 42 U.S.C. § 1983 action. When Plaintiff filed his pro se complaint, he was in custody at the Washington County Detention Center, Fayetteville, Arkansas. By Opinion and Order filed November 7, 2012 (Dkt. # 6), the Court granted Plaintiff's motion to proceed in forma pauperis and determined that the complaint failed to state a claim upon which relief may be granted. For that reason, the Court directed Plaintiff to file, on or before December 7, 2012, an amended complaint in order to cure deficiencies. Plaintiff was specifically advised that if he failed to file an amended complaint by the deadline, this action would be dismissed without prejudice for failure to state a claim upon which relief may be granted. See Dkt. # 6.

To date, Plaintiff has not filed an amended complaint and his deadline has passed. Therefore, this action shall be dismissed without prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). This dismissal shall count as Plaintiff's first "prior occasion" under 1915(g) (providing that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States

that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury").

ACCORDINGLY IT IS HEREBY ORDERED that:

1. Plaintiff's civil rights complaint (Dkt. # 1) is **dismissed without prejudice** for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).
2. The Clerk is directed to **flag** this dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) as Plaintiff's first "prior occasion" for purposes of 28 U.S.C. § 1915(g).
3. This is a final Order terminating this action.

DATED THIS 26th day of December, 2012.



GREGORY K. FRIZZELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT